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EEOC v. United Airlines, Inc.

Judge Ronald A. Guzman

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EEOC v. United Airlines, Inc.

Keywords

EEOC, United Airlines Inc., 02 C 5081, Consent Decree, Disparate Treatment, Transportation, Employment Law, ADAAA

United States District Court, Northern District of Illinois

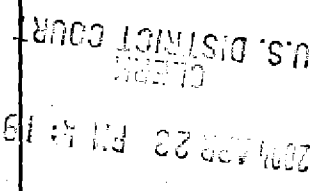
Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 5081	DATE	4/13/2004
CASE TITLE	EQUAL EMPLOYMENT OPPORTUNITY vs. UNITED AIR LINES, INC.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:**DOCKET ENTRY:**

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Joint motion for entry of consent decree is granted. Enter consent decree. This case is terminated. Any pending motions or schedules are stricken.

- (11) ☒ [For further detail see order attached to the original minute order.]

No notices required, advised in open court.		number of notices	Document Number 23
No notices required.		APR 23 2004 date docketed	
Notices mailed by judge's staff.		15 docketing deputy initials	
Notified counsel by telephone.		date mailed notice	
<input checked="" type="checkbox"/> Docketing to mail notices.		mailing deputy initials	
Mail AO 450 form.	Date/time received in central Clerk's Office		
Copy to judge/magistrate judge.			
CG	courtroom deputy's initials		

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)**

Plaintiff,)

v.)

**UNITED AIR LINES, INC., d/b/a UNITED)
AIR LINES,)**

Defendant)

DOCKETED

APR 26 2004

Case No. 02 C 5081

Judge Ronald Guzman

Magistrate Judge Levin

CONSENT DECREE

THE LITIGATION

Plaintiff Equal Employment Opportunity Commission ("EEOC") filed this action alleging that Defendant United Airlines, Inc. ("United" or "Defendant") violated Title I of the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. § 12101 *et seq.* The EEOC seeks relief for Robert Zackery ("Mr. Zackery" or the "Charging Party"), who filed a charge of discrimination and a class of other applicants.

In the interest of resolving this matter, and as a result of comprehensive settlement negotiations, the parties have agreed that this action should be finally resolved by entry of this Consent Decree. This Consent Decree fully and finally resolves any and all issues and claims arising out of the Charge of Discrimination filed by Mr. Zackery (EEOC Charge No. 210973368) and the Complaint filed by the EEOC in this action.

On December 9, 2002, United and several affiliated companies (UAL CORPORATION, et al.) (the "Debtors") filed petitions for relief pursuant to Chapter 11 of Title II of the United States Code (the "Bankruptcy Code"). These cases are being jointly administered under Case

No. 02-48191 through 02-48218 before the Honorable Judge Eugene R. Wedoff in the Bankruptcy Court in the Northern District of Illinois (the "Bankruptcy Case").

FINDINGS

Having carefully examined the terms and provisions of this Decree, and based on the pleadings, records and stipulations of the parties, the Court finds the following:

- A. This Court has jurisdiction of the subject matter of this action and of the parties.
- B. The terms of this Decree are adequate, fair and reasonable. The rights of the parties and the public interest are adequately protected by this Decree.
- C. This Decree conforms with the Federal Rules of Civil Procedure and the ADA and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of the ADA and will be in the best interests of the parties, the Charging Party, and the public.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

DURATION OF DECREE AND RETENTION OF JURISDICTION

- 1. Unless otherwise noted, all provisions of this Decree shall be in effect (and the Court shall retain jurisdiction of this matter to enforce this Decree) for a period of two (2) years from the date the Court enters the Decree (hereinafter the "effective date"), provided, however, that if, at the end of the two (2) year period, any disputes under Paragraph 14 below remain unresolved, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter) solely for the purpose of resolving all such disputes and the term shall terminate after all disputes have been resolved.

INJUNCTION AGAINST DISABILITY DISCRIMINATION

- 2. For a period of two (2) years following the effective date of this Decree, United Airlines and its officers, agents, management (including supervisory employees), successors,

assigns, and all persons acting in concert with them shall not: (i) discriminate against United Airlines employees/applicants for employment with the Chicago O'Hare Airport Operations Division on the basis of their disability related to multiple sclerosis or diabetes; or (ii) fail to make a reasonable accommodation for any qualified employee/applicant with the Chicago O'Hare Airport Operations Division, with a disability related to diabetes or multiple sclerosis, in violation of the ADA. Chicago O'Hare Airport Operations Division includes employees in Ramp Service, Cabin Service and Customer Service Representatives at the Chicago O'Hare facility.

United's obligations under this injunction are no greater than those required under the ADA or any other comparable state or local law, or ordinance prohibiting disability discrimination.

The EEOC's ability to seek a contempt order for violation of this Paragraph shall be no greater than its statutory rights conferred by the ADA or Title VII, nor shall it relieve the EEOC of its statutory obligations under the enforcement provisions of the ADA or Title VII.

EFFECT OF DECREE

3. This Consent Decree shall not constitute an admission by any party as to the claims or defenses of another party.

SETTLEMENT OF CLAIM

4. Mr. Zackery and the class members will be allowed a noncontingent, general unsecured prepetition claim in the gross amount of \$750,000.00 on account of any damages arising out of this action (less applicable withholding for Zackery and the class members' share of federal, state and local taxes and other applicable deductions as required by law). United will direct its official Notice and Claims Agent to docket a noncontingent, liquidated, undisputed, general unsecured prepetition claim in the amount of \$750,000.00 in favor of Mr. Zackery and

the class members and to expunge the EEOC's Proof of Claim filed on Mr. Zackery and the class members' behalf (identified in the Bankruptcy Case as Claim No. 2368), as well as any other Proof of Claim filed by Mr. Zackery, any class member or any other individual on their behalf. The allocation of this amount among the class members is set forth in Exhibit C, which is filed under seal. Mr. Zackery, the class and the EEOC acknowledge that any distribution on account of such claim will be made only pursuant to a confirmed plan of reorganization in the Bankruptcy Case. Such claim shall not enjoy any type of statutory or administrative priority over any other general, unsecured, prepetition claim in the Bankruptcy Case.

5. The Debtors shall duly file a motion (the "9019 Motion") with the Bankruptcy Court pursuant to Federal Rule of Bankruptcy Procedure 9019 for approval of this Consent Decree. In the absence of any objection filed and served within twenty (20) days after the filing of the 9019 Motion, the Debtors will submit a Certificate of No Objection so that the Bankruptcy Court may enter the order (the "9019 Order") approving the 9019 Motion. After the Bankruptcy Court enters the 9019 Order, the Debtors may execute and consummate the Consent Decree, and said Consent Decree will be binding on them and their estate without further action by the Bankruptcy Court. If an objection is raised within the 20-day notice period and ultimately is resolved in the Debtors' favor, the Consent Decree will become effective upon entry of a court order denying the objection. If an objection is raised within the 20-day notice period and ultimately is resolved in favor of the objector, the Consent Decree shall be deemed to have been void *ab initio*.

6. United shall issue Mr. Zackery and the named class members four (4) domestic vouchers each for travel within the United States within thirty (30) days of the effective date of this Decree. The travel vouchers shall be issued without any travel restrictions, including but not

limited to blackout dates, shall not expire and shall be transferable to any person whom Mr. Zackery or the class member designates. If expiration dates are included on the vouchers, then United shall designate a person to whom Mr. Zackery or the class member may renew the voucher.

7. Throughout the duration of this Decree, United shall give priority to applications received from Zackery and the named class members for employment as Ramp Service people at United's Chicago O'Hare facility. The term "priority" means that United will interview any named class members for open Ramp Services positions at the Chicago O'Hare facility before interviewing any other applicant. Nothing in this provision impacts or supercedes United's obligations under the relevant Collective Bargaining Agreement ("CBA"). Named class members who wish to submit an application during this period will contact Vania Montero Wit in United's Legal Department. Named class members will not be required to telephone Ms. Wit prior to applying, but may simply mail an application to her attention at UAL, WHQLD, 1200 East Algonquin Road, Elk Grove, Illinois 60007. United shall provide the EEOC with a copy of all named class members' applications within thirty (30) days of receipt by Ms. Wit of any such application.

POSTING OF NOTICE

8. Within ten (10) business days after the effective date of this Decree, United shall post copies of the Notice attached as Exhibit B to this Decree on the bulletin boards at its Chicago O'Hare facility, which are usually used by United for communicating with United's O'Hare Airport Operations employees. The Notice shall remain posted for two (2) years from the effective date of this Decree. United shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. United shall certify to the EEOC in writing within ten (10) business days after the effective date of the Decree that the Notice has

been properly posted. United shall permit a representative of the EEOC to enter United's premises for purpose of verifying compliance with this Paragraph at any time during normal business hours without prior notice.

RECORD KEEPING

9. For a period of two (2) years from the effective date of this Decree, United shall maintain all records concerning its implementation of this Decree. United shall also maintain records of complaints of disability discrimination and failure to accommodate disabilities from employees or applicants for employment with Chicago O'Hare Airport Operations, made to Personnel Administrative Supervisors, Human Resources with responsibility for O'Hare Airport Operations, the Legal Department, United's toll-free Business Conduct Line, and to Corporate Diversity. The records shall include United's investigation of such complaints and any response or action taken as a result of the complaints.

REPORTING

10. United shall furnish to the EEOC the following written reports every six (6) months for a period of two (2) years, following the effective date of this Decree and continuing until the expiration of this Decree. The first report shall be due six (6) months after effective date of the Decree. Each such report shall contain:

- a. A summary of the information recorded by United pursuant to Paragraph 9;
- b. A certification by United that the Notice required to be posted pursuant to Paragraph 8 remained posted during the entire six (6) month period preceding the report;
- c. A certification that United's Chicago O'Hare Airport Operations employees have received the training required pursuant to Paragraph 12 and 13, a list of the

employee job classifications that have received such training, and the dates on which they received such training.

DISTRIBUTION OF POLICY
AGAINST DISABILITY DISCRIMINATION

11. United will redistribute its policy against disability discrimination in the manner it normally distributes its personnel policies within thirty (30) days of this Decree. The policy shall, at a minimum:

- a. Specifically prohibit all discrimination on the basis of disability against United Airlines employees and applicants for employment.
- b. Provide that employees are entitled to a reasonable accommodation of their qualifying disability in accordance with the terms of the ADA.
- c. Provide that complaints of disability discrimination will be investigated thoroughly and promptly.
- d. Provide that United employees who violate the policy with respect to qualifying employees and applicants for employment are subject to discipline up to and including discharge.

In 1998, United Airlines adopted a revised accommodation process for persons with diabetes applying for work in the Chicago O'Hare Airport Operations Division, which provides, at minimum:

- a. Decisions about employment, restriction, and accommodation of employees with diabetes in safety-sensitive positions at United Airlines' Chicago O'Hare Airport Operations are made on a case-by-case basis.

b. United Airlines must request information and/or consultation from applicants for safety sensitive positions at Chicago O'Hare Airport Operations to determine whether an accommodation is appropriate.

c. If it is determined that accommodation is appropriate, United Airlines must notify the applicant that they may have the opportunity to participate in the glucose monitoring program.

TRAINING

12. All United supervisors and managers at the Chicago O'Hare facility working in Airport Operations, including Human Resources personnel, shall participate in a training session by a United in-house or outside attorney, or a trainer paid for by United regarding the requirements of the ADA. United shall submit to the EEOC the materials to be used in, relied upon, or distributed in the training session, forty-five (45) days prior to such training. The EEOC will respond to United, in writing, within ten (10) days of receipt of the training materials. The training may begin within sixty (60) days of effective date of this Decree and shall be completed within twelve (12) months of the effective date of this Decree. United's policy, as referenced in Paragraph 11, shall be distributed at the training session(s).

13. All medical personnel performing pre-employment medical exams for applicants for safety-sensitive positions at United's Chicago O'Hare Airport Operations Division shall receive training on the general requirements of the ADA and specifically on United's policy regarding accommodating persons with diabetes by allowing them to participate in a glucose monitoring program. The first training shall be conducted within sixty (60) days of the effective date of this Decree and shall be completed within twelve (12) months of the effective date of this Decree. All medical personnel performing pre-employment medical exams for applicants for safety-sensitive positions at United's Chicago O'Hare Airport Operations hired after the training

session, shall receive the same training within 30 (thirty) days of hire. The training sessions shall include, at a minimum:

a. All medical personnel performing pre-employment medical exams for applicants for safety sensitive positions at Chicago O'Hare Airport Operations shall be informed that employment, restriction and accommodation of employees with diabetes are made on a case-by-case basis.

b. All medical personnel performing pre-employment medical exams for applicants for safety sensitive positions at Chicago O'Hare Airport Operations shall be instructed to request information or consultation from a diabetic applicant to be able to make a recommendation for accommodation.

c. All medical personnel performing pre-employment medical exams for applicants for safety sensitive positions at Chicago O'Hare Airport Operations shall be instructed that if accommodation for a diabetic applicant is appropriate, they should inform the applicant that he or she has the opportunity to participate in the glucose monitoring program;

d. All medical personnel performing pre-employment medical exams for applicants for safety sensitive positions at Chicago O'Hare Airport Operations shall be instructed to inform Employment if the status of the disease precludes accommodation;

e. All medical personnel performing pre-employment medical exams for applicants for safety sensitive positions at Chicago O'Hare Airport Operations shall be instructed to clarify any individual accommodation issues with the supervisor.

DISPUTE RESOLUTION

14. In the event that either party to this Decree believes that the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance and shall afford the alleged non-complying party (10) business

days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within ten (10) business days, the complaining party may apply to the Court for appropriate relief.

MISCELLANEOUS PROVISIONS

15. Each party to this Decree shall bear its own expenses and costs. The EEOC and United shall bear their own attorney's fees.

16. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, assigns, and successors of all parties.

17. When this Consent Decree requires the submission by United of reports, certifications, notices, or other materials to the EEOC, they shall be mailed to: United Airlines ADA II Settlement, Equal Employment Opportunity Commission, 500 West Madison Street, Suite 2800, Chicago, Illinois 60661. When this Decree requires submission by the EEOC of materials to United Airlines, they shall be mailed to: Vania Montero Wit, United Airlines, WHQLD, 1200 East Algonquin Road, Elk Grove Village, Illinois 60007.

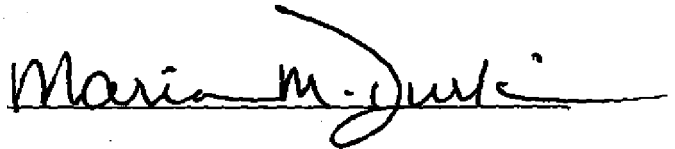
18. In the event of a catastrophic event, United Airlines may petition the Court for relief from or suspension of the Consent Decree.

ENTERED AND APPROVED FOR:

**Equal Employment Opportunity
Commission**

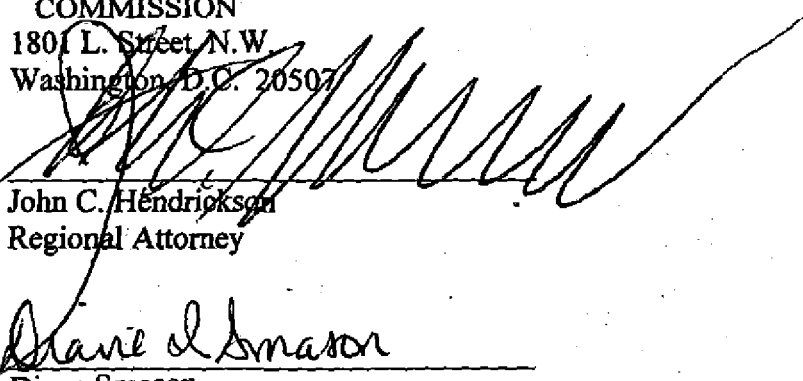
United Airlines, Inc.

ERIC S. DREIBAND
General Counsel

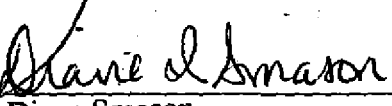


JAMES LEE
Deputy General Counsel

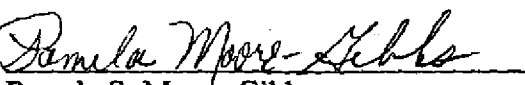
**EQUAL EMPLOYMENT
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Regional Attorney



Diane Smason
Supervisory Trial Attorney



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Date: 4/13/04

ENTER: 

Honorable Ronald A. Guzman
United States District Judge